

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3699 of 1984

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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HEMANT BACHUBHAI MANDE

Versus

STATE OF GUJARAT

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Appearance:

MR MTM HAKIM for Petitioner

MR SR DIVETIA for Respondent

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CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 11/07/97

ORAL JUDGMENT

1. Heard learned counsel for the parties. The learned counsel for the petitioner contended that this matter is squarely covered by the decision of this Court in Special Civil Application No.5415 of 1983 decided on 3.3.97.

2. The petitioner filed this Special Civil

Application before this Court and prayed for restraining the respondents from terminating his services. Further prayer has been made for direction to the respondents to treat the petitioner as workcharge Clerk and to consider him for absorption as a clerk on the permanent establishment and to pay him salary, allowances and other benefits on that basis.

3. The petitioner stated that he was appointed as workcharge clerk on 29th July 1981 in the time scale of Rs.260-400 and that appointment was only for 28 days. This appointment was continued from time to time and last such written appointment order was issued on 20th October 1983, whereunder he was again appointed for 28 days. The petitioner, having apprehension of his termination of services, filed this Special Civil Application which has come up for admission on 20th July 1984, on which date Notice was issued and interim relief in terms of paragraph 16(D) has been granted. Paragraph 16(D) in the Special Civil Application reads as under:

pending the admission, hearing and final disposal of this Special Civil Application, the Hon'ble Court may be pleased to restrain the Respondents from terminating the petitioner's services and to restrain the Respondents from interfering with the discharge of his duties by the petitioner as a Clerk in the office Respondent No.2 and to direct the Respondents to pay the petitioner all the arrears of salary from 1st November 1983 and to continue to pay the petitioner salary of a Work Charge Clerk regularly from month to month in future

This interim relief was ordered to be continued on 19th June 1985. So, for all these years, the petitioner is working in the Department.

4. The Government has taken a policy decision and the Government Resolution has been passed on 17th October 1988 regarding giving of the benefits to the work charge employees who were daily wagers. The contention of learned counsel for the respondents is that the petitioner was given only 28 days' appointment from time to time. It is true but now for all these more than 13 years the petitioner is regularly working in the time scale continuously without any break.

5. In view this fact, interest of justice will be met in case this Special Civil Application is disposed of with direction to the respondents to consider the case of

the petitioner for termination of services afresh and in case on consideration of his case, it is decided to terminate his services, then a reasoned order may be passed. However, the order made adverse to the petitioner may not be given effect to for 15 days from the date of despatch of the same. A copy of the order, if adversely made against the petitioner, shall be sent by registered post A.D.

6. The Special Civil Application and Rule stand disposed of in aforesaid terms with no order as to costs.

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